

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4038 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge? No

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P B PATEL

Versus

STATE OF GUJARAT

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Appearance:

Shri A.J.Patel, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for  
the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 01/05/96

ORAL JUDGEMENT

The order passed by the District Development Officer at Gandhinagar (respondent No.2 herein) on 21st March 1988 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No.1 herein) on 30th November 1989 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.2 cancelled the permission granted by the order passed on 5th March 1982 for non-agricultural use of one parcel of land bearing Block No.1219 admeasuring 8 acres 39 gunthas (equivalent to 36,322 square metres) situated at Adalaj taluka and district Gandhinagar (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner appears to have applied for what is popularly known as the N.A.Permission on 6th February 1982. By the order passed on 5th March 1982, respondent No.2 granted such permission on certain terms and conditions. Its copy is at Annexure-A to this petition. One of the conditions was regarding payment of Rs.53,850 towards the premium amount for conversion of the disputed land from new tenure to old tenure. The petitioner is stated to have paid up the premium amount on 4th May 1982. It appears that the order at Annexure-A to this petition came to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) was therefore contemplated. A show cause notice thereupon came to be issued on 15th October 1983 calling upon the petitioner to show cause why the order at Annexure-A to this petition should not be revised. The petitioner appears to have filed his reply thereto. After hearing the petitioner, by the order passed on 27th February 1984, respondent No.1 set aside only that part of the order by which the premium amount was fixed without disturbing the N.A.Permission. Its copy is at Annexure-B to this petition. It may be noted that fixation of the premium amount for conversion of the disputed land from new tenure to old tenure was referred to the Collector of Gandhinagar. It appears that the matter was pending before the Collector of Gandhinagar. In the meantime, respondent No.2 issued one show cause notice on 17th November 1987 calling upon the petitioner to show cause why the N.A.Permission granted by the order at Annexure-A to this petition should not be cancelled. Its copy is at Annexure-C to this petition. The petitioner filed his reply thereto on 14th December 1987. Its copy is at Annexure-D to this petition. Thereafter, by the order passed on 21st March 1988, respondent No.2

cancelled the N.A.Permission granted by the order at Annexure-A to this petition. Its copy is at Annexure-E to this petition. The aggrieved petitioner carried the matter in revision before respondent No.1 under section 211 of the Code. By the order passed by and on behalf of respondent No.1 on 30th January 1989, respondent No.1 rejected it. Its copy is at Annexure-F to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India.

3. It may be noted that the N.A.Permission was cancelled by the order at Annexure-E to this petition on the ground that the construction was not completed within three years from the date of approval of the plans by the local authority in accordance with the terms in that regard contained in the order at Annexure-A to this petition. Similar fact-situation arose in Special Civil Application No.4037 of 1989. Identical orders as are found at Annexures-E and F to this petition were under challenge in that petition. By its decision rendered on 30th April 1996, this court set aside the orders identical with the orders at Annexures-E and F to this petition which are under challenge in this petition. It is not necessary to burden this judgment by repeating the reasoning contained therein for setting aside the impugned orders. The same reasoning would be applicable for the purpose of setting aside the impugned orders at Annexures-E and F to this petition.

4. I am informed at the Bar by learned Advocate Shri Patel for the petitioner that, by his order passed on 18th August 1988, the Collector has fixed the premium amount for conversion of the disputed land from new tenure to old tenure. I am shown its xerox copy. It is kept on record. I am further informed by learned Advocate Shri Patel for the petitioner that it has been carried in revision before respondent No.1 and it is still pending. In that view of the matter, no direction deserves to be given to the Collector of Gandhinagar for deciding the premium amount as was done in Special Civil Application No.4037 of 1989 decided on 30th April 1996.

5. In the result, this petition is accepted. The order passed by the District Development Officer at Gandhinagar on 21st March 1988 at Annexure-E to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 30th January 1989 at Annexure-F to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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